

## **Assembly Bill No. 930**

### **CHAPTER 717**

An act to amend Sections 11875, 11876, 11877.6, 11877.7, 11877.8, and 11877.14 of, and to add Section 11876.1 to, the Health and Safety Code, relating to alcohol and drug programs.

[Approved by Governor October 6, 1999. Filed  
with Secretary of State October 10, 1999.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 930, Calderon. Alcohol and drug programs: narcotic treatment programs.

Existing law authorizes the State Department of Alcohol and Drug Programs to perform certain licensing and inspection duties and to establish minimum criteria for the operation of methadone and levoalphacetylmethadol (LAAM) programs for the treatment of narcotic addicts.

This bill would require the department to perform these licensing and inspection duties and to establish and enforce the minimum criteria for narcotic treatment programs.

Existing law authorizes the department to conduct annual inspections of all narcotic treatment programs established and licensed under these provisions. Existing law requires the department, after conducting an inspection, to provide an inspection report describing any program deficiencies to the licensee, the program to submit to the department a corrective action plan, and the department to conduct a subsequent onsite inspection.

This bill would require the annual inspections of these narcotic treatment programs to include the evaluation of input regarding concerns about the narcotic treatment program. The bill would require the department to provide an inspection report to the licensee within 30 days of the completed onsite review, the licensee to submit a corrective action plan within 30 days of receipt of the inspection report, the program to implement all corrective actions contained in the plan within 30 days of approval by the department of the corrective action plan, and the department to conduct subsequent inspections of the program.

This bill would require the department to impose a civil penalty of \$100 a day for a narcotic treatment program that fails to submit a corrective action plan or to timely implement any corrective action when it has been found to not be in compliance with applicable laws and regulations.

Existing law specifies various other duties of the department with regard to narcotic treatment programs.

This bill would revise some of these duties to include studying and evaluating and providing advice, consultation, and technical assistance to narcotic treatment programs regarding the programs' adherence to all applicable laws and regulations and the impact of the programs on the communities in which they are located.

Existing law authorizes the director to deny the application for initial issuance of a license to provide narcotic treatment services if certain conditions exist with regard to the applicant, or any partner, officer, director, or 10% or greater shareholder.

This bill would add to the conditions under which an application may be denied that the applicant or program violated any of the laws or regulations governing narcotic treatment programs that relate to the health and safety of patients, the local community, or the general public with respect to any other license issued to that applicant to provide narcotic treatment services. The bill would require the department to deny the application for initial licensure under these conditions unless the department makes certain determinations regarding the correction of deficiencies in the other licensed narcotic treatment programs.

Existing law authorizes the department to suspend or revoke any license issued under these provisions, or deny an application to renew a license or modify the terms and conditions of a license upon certain grounds, including the violation by the licensee of the laws and regulations governing narcotic treatment programs that relate to the health and safety of the patients or the general public, or the repeated violation of the laws and regulations governing narcotic treatment programs.

This bill would revise the grounds for these discretionary departmental actions and would require, rather than authorize, the department to suspend or revoke a license or deny an application under these provisions for violations that present an imminent danger of death or severe harm to any participant of the program or a member of the general public.

Existing law authorizes the department to cease review of an application for a license to provide narcotic treatment services if certain conditions exist. Under this provision, the department may cease review if the applicant was denied a license under the provisions regulating narcotic treatment programs within the preceding year.

This bill would require the department to cease review of an application for a license under these provisions. The bill would also require the department to cease review if the applicant had a license suspended under these provisions within the preceding year.

Existing law authorizes the director to issue an order that prohibits a narcotic treatment program from admitting new patients or providing patients with take-home dosages of a replacement narcotic drug when the director makes certain determinations.



This bill would require the department to issue the order prohibiting the specified acts.

Existing law authorizes the department to vacate the order prohibiting the specified acts when the program submits a corrective action plan that reasonably addresses the deficiency or substantially conforms to the required action set out in the order. Under existing law, the department order is vacated when the department accepts a corrective action plan or fails to reject a plan within 10 working days after the receipt of the plan.

This bill would authorize the department to vacate the order when the corrective action plan submitted by the program both reasonably addresses the deficiency and substantially conforms to the required action set out in the order. The bill would provide that the department order is vacated upon acceptance by the department of a corrective action plan only if the department also ensures substantial conformity with the required action set out in the order.

Existing law authorizes the director to issue an order temporarily suspending a narcotic treatment program license prior to any administrative hearing under certain circumstances.

This bill would require the department, when the outcome at a hearing held subsequent to the temporary suspension is adverse to the licensee, to suspend a narcotic treatment program's license under this provision, as provided.

*The people of the State of California do enact as follows:*

SECTION 1. Section 11875 of the Health and Safety Code is amended to read:

11875. The Legislature finds and declares that it is in the best interests of the health and welfare of the people of this state to coordinate narcotic treatment programs to use replacement narcotic therapy in the treatment of addicted persons whose addiction was acquired or supported by the use of a narcotic drug or drugs, not in compliance with a physician and surgeon's legal prescription, and to establish and enforce minimum requirements for the operation of all narcotic treatment programs in this state.

SEC. 2. Section 11876 of the Health and Safety Code is amended to read:

11876. (a) In addition to the duties authorized by other provisions, the department shall perform all of the following:

(1) License the establishment of narcotic treatment programs in this state to use replacement narcotic therapy in the treatment of addicted persons whose addiction was acquired or supported by the use of a narcotic drug or drugs, not in compliance with a physician and surgeon's legal prescription, except that the Research Advisory Panel shall have authority to approve methadone or LAAM research programs. The department shall establish and enforce the criteria for

the eligibility of patients to be included in the programs, program operation guidelines, such as dosage levels, recordkeeping and reporting, urinalysis requirements, take-home doses of methadone, security against redistribution of the replacement narcotic drugs and any other regulations that are necessary to protect the safety and well-being of the patient, the local community, and the public and to carry out the provisions of this chapter. A program may admit a patient to narcotics maintenance or narcotics detoxification treatment seven days after completion of a prior withdrawal treatment episode. The arrest and conviction records and the records of pending charges against any person seeking admission to a narcotic treatment program shall be furnished to narcotic treatment program directors upon written request of the narcotic treatment program director provided the request is accompanied by a signed release from the person whose records are being requested.

(2) Inspect narcotic treatment programs in this state and ensure that programs are operating in accordance with the law and promulgated regulations. The department shall have sole responsibility for compliance inspections of all programs in each county. Annual compliance inspections shall consist of an evaluation by onsite review of the operations and records of licensed narcotic treatment programs' compliance with applicable state and federal laws and regulations and the evaluation of input from local law enforcement and local governments, regarding concerns about the narcotic treatment program. At the conclusion of each inspection visit, the department shall conduct an exit conference to explain the cited deficiencies to the program staff and to provide recommendations to ensure compliance with applicable laws and regulations. The department shall provide an inspection report to the licensee within 30 days of the completed onsite review describing the program deficiencies. A corrective action plan shall be required from the program within 30 days of receipt of the inspection report. All corrective actions contained in the plan shall be implemented within 30 days of receipt of approval by the department of the corrective action plan submitted by the narcotic treatment program. For programs found not to be in compliance, a subsequent inspection of the program shall be conducted within 30 days after the receipt of the corrective action plan in order to ensure that corrective action has been implemented satisfactorily. Subsequent inspections of the program shall be conducted to determine and ensure that the corrective action has been implemented satisfactorily. For purposes of this requirement "compliance" shall mean to have not committed any of the grounds for suspension or revocation of a license provided for under subdivision (a) of Section 11877.7 or paragraph (2) of subdivision (b) of Section 11877.7. Inspection of narcotic treatment programs shall be based on objective criteria including, but not limited to, an evaluation of the programs' adherence to all applicable



laws and regulations and input from local law enforcement and local governments. Nothing in this section shall preclude counties from monitoring their contract providers for compliance with contract requirements.

(3) Charge and collect licensure fees. In calculating the licensure fees the department shall include staff salaries and benefits, related travel costs, and state operational and administrative costs. Fees shall be used to offset licensure and inspection costs not to exceed actual costs.

(4) Study and evaluate, on an ongoing basis, narcotic treatment programs including, but not limited to, the adherence of the programs to all applicable laws and regulations and the impact of the programs on the communities in which they are located.

(5) Provide advice, consultation, and technical assistance to narcotic treatment programs to ensure that the programs comply with all applicable laws and regulations and to minimize any negative impact that the programs may have on the communities in which they are located.

(6) In its discretion, to approve local agencies or bodies to assist it in carrying out the provisions of this chapter provided that the department may not delegate responsibility for inspection or any other licensure activity without prior and specific statutory approval. However, the department shall evaluate recommendations made by drug program administrators regarding licensing activity in their respective counties.

(7) The director may grant exceptions to the regulations adopted under this chapter if he or she determines that this action would improve treatment services or achieve greater protection to the health and safety of patients, the local community, or the general public. No exception may be granted if it is contrary to, or less stringent than, the federal laws and regulations which govern narcotic treatment programs.

(b) It is the intent of the Legislature in enacting this section in order to protect the general public and local communities, that self-administered dosage shall only be provided when the patient is clearly adhering to the requirements of the program, and where daily attendance at a clinic would be incompatible with gainful employment, education, and responsible homemaking. The department shall define “satisfactory adherence” and shall ensure that patients not satisfactorily adhering to their programs shall not be provided take-home dosage.

(c) There is established in the State Treasury a Narcotic Treatment Program Licensing Trust Fund. All licensure fees collected from the providers of narcotic treatment service shall be deposited in this fund. Except as otherwise provided in this section, if funds remain in this fund after appropriation by the Legislature and allocation for the costs associated with narcotic treatment licensure

actions and inspection of narcotic treatment programs, a percentage of the excess funds shall be annually rebated to the licensees based on the percentage their licensing fee is of the total amount of fees collected by the department. A reserve equal to 10 percent of the total licensure fees collected during the preceding fiscal year may be held in each trust account to reimburse the department if the actual cost for the licensure and inspection exceed fees collected during a fiscal year.

(d) Notwithstanding any provision of this code or regulations to the contrary, the department shall have sole responsibility and authority for determining if a state narcotic treatment license shall be granted and for administratively establishing the maximum treatment capacity of any license. However, the department shall not increase the capacity of a program unless it determines that the licensee is operating in full compliance with applicable laws and regulations.

SEC. 3. Section 11876.1 is added to the Health and Safety Code, to read:

11876.1. The department shall impose a civil penalty of one hundred dollars (\$100) a day for a program that fails to timely submit a corrective action plan, or to timely implement any corrective action when it has been found to not be in compliance with applicable laws and regulations as required in Section 11876.

SEC. 4. Section 11877.6 of the Health and Safety Code is amended to read:

11877.6. The director may deny the application for initial issuance of a license if the applicant, or any partner, officer, director, or 10 percent or greater shareholder:

(a) Fails to meet the qualifications for licensure established by the department pursuant to this article. However, the director may waive any established qualification for licensure of a narcotic treatment program if he or she determines that it is reasonably necessary in the interests of the public health and welfare.

(b) Was previously the holder of a license issued under this article, and the license was revoked and never reissued or was suspended and not reinstated, or the holder failed to adhere to applicable laws and regulations regarding narcotic treatment programs while the license was in effect.

(c) Misrepresented any material fact in the application.

(d) Committed any act involving fraud, dishonesty, or deceit, with the intent to substantially benefit himself or herself or another or substantially injure another, and the act is substantially related to the qualification, functions or duties of, or relating to, a narcotic treatment program license.

(e) Was convicted of any crime substantially related to the qualifications, functions, or duties of, or relating to, a narcotic treatment program license.



(f) The director, in considering whether to deny licensure under subdivision (d) or (e), shall determine whether the applicant is rehabilitated after considering all of the following criteria:

- (1) The nature and severity of the act or crime.
- (2) The time that has elapsed since the commission of the act or crime.
- (3) The commission by the applicant of other acts or crimes constituting grounds for denial of the license under this section.
- (4) The extent to which the applicant has complied with terms of restitution, probation, parole, or any other sanction or order lawfully imposed against the applicant.
- (5) Other evidence of rehabilitation submitted by the applicant.

(g) With respect to any other license issued to an applicant to provide narcotic treatment services, violated any provision of this article or regulations adopted under this article that relate to the health and safety of patients, the local community, or the general public. Violations include, but are not limited to, violations of laws and regulations applicable to take-home doses of methadone, urinalysis requirements, and security against redistribution of replacement narcotic drugs. In these cases, the department shall deny the application for an initial license unless the department determines that all other licensed narcotic treatment programs maintained by the applicant have corrected all deficiencies and maintained compliance for a minimum of six months.

SEC. 5. Section 11877.7 of the Health and Safety Code is amended to read:

11877.7. (a) The director shall suspend or revoke any license issued under the provisions of this article, or deny an application to renew a license or to modify the terms and conditions of a license, upon any violation by the licensee of any provision of this article or regulations adopted under this article that presents an imminent danger of death or severe harm to any participant of the program or a member of the general public.

(b) The director may suspend or revoke any license issued under this article, or deny an application to renew a license or to modify the terms and conditions of a license, upon any of the following grounds and in the manner provided in this article:

(1) Violation by the licensee of any laws or regulations of the United States Food and Drug Administration or the United States Department of Justice, Drug Enforcement Administration which are applicable to narcotic treatment programs.

(2) Any violation that relates to the operation or maintenance of the program that has an immediate relationship to the physical health, mental health, or safety of the program participants or general public.



(3) Aiding, abetting, or permitting the violation of, or any repeated violation of, any of the provisions set forth in subdivision (a) or in paragraph (1) or (2).

(4) Conduct in the operation of a narcotic treatment program which is inimical to the health, welfare, or safety of either an individual in, or receiving services from, the program, the local community, or the people of the State of California.

(5) The conviction of the licensee, or any partner, officer, director, or 10 percent or greater shareholder, at any time during licensure, of a crime substantially related to the qualifications, functions or duties of, or relating to, a narcotic treatment program licensee.

(6) The commission by the licensee, or any partner, officer, director, or 10 percent or greater shareholder, at any time during licensure, of any act involving fraud, dishonesty, or deceit, with the intent to substantially benefit himself or herself or another, or substantially to injure another and which act is substantially related to the qualifications, functions or duties of, or relating to, a narcotic treatment program licensee.

(7) Diversion of narcotic drugs. A program's failure to maintain a narcotic drug reconciliation system that accounts for all incoming and outgoing narcotic drugs, as required by departmental or federal regulations, shall create a rebuttable presumption that narcotic drugs are being diverted.

(8) Misrepresentation of any material fact in obtaining the narcotic treatment program license.

(9) Failure to comply with a department order to cease admitting patients or to cease providing patients with take-home dosages of replacement narcotic drugs.

(10) Failure to pay any civil penalty assessed pursuant to paragraph (3) of subdivision (a) of Section 11877.14 where the penalty has become final, unless payment arrangements acceptable to the department have been made.

(c) Prior to issuing an order pursuant to this section, the director shall ensure continuity of patient care by the program's guarantor or through the transfer of patients to other licensed programs. The director may issue any needed license or amend any other license in an effort to ensure that patient care is not impacted adversely by an order issued pursuant to this section.

SEC. 6. Section 11877.8 of the Health and Safety Code is amended to read:

11877.8. (a) The department shall cease review of an application for a license if:

(1) An application for a license indicates, or the department determines during the application inspection process, that the applicant was issued a license under this article and the prior license was revoked within the preceding two years. The department shall





cease any further review of the application until two years have elapsed from the date of the revocation.

(2) An application for a license indicates, or the department determines during the application inspection process, that the applicant was denied a license or had a license suspended under this article within the preceding year. The department shall cease any further review of the application until one year has elapsed from the date of the denial or suspension.

(b) The department may cease review of an application for license renewal if either of the following occur:

(1) The applicant has not paid the required license fee.

(2) The county in which the licensee is located certifies to the department's satisfaction that there is no need for the narcotic treatment program because of a substantial decline in medically qualified narcotic treatment patients in the licensee's catchment area, or clearly demonstrates that other applicants for licensure can provide more efficient, cost-effective and sufficient narcotic treatment services in the catchment area, or that the license should not be renewed due to one of the grounds which are enumerated in Section 11877.7.

(c) Upon cessation of review, the license shall be permitted to expire by its own terms. However, if the licensee subsequently submits the items, the absence of which led to the cessation of review, the department may reinstate the license.

(d) Cessation of review shall not constitute a denial of the application for purposes of Sections 11877.6 and 11877.7.

SEC. 7. Section 11877.14 of the Health and Safety Code is amended to read:

11877.14. (a) (1) The director shall, in addition to any other remedy, issue an order that prohibits a narcotic treatment program from admitting new patients or from providing patients with take-home dosages of a replacement narcotic drug when the director determines pursuant to the compliance inspection procedures set out in paragraph (2) of subdivision (a) of Section 11876, that a program has done any of the following:

(A) Failed to provide adequate security measures over its narcotic drug supply as agreed in the program's approved protocol.

(B) Failed to maintain a narcotic drug reconciliation system which accounts for all incoming and outgoing narcotic drugs.

(C) Diverted narcotic drugs.

(D) Repeatedly violated one or more departmental or federal regulations governing narcotic treatment programs, which violations may subject, or may have subjected a patient to a health or life-endangering situation.

(E) Repeatedly violated one or more departmental or federal regulations governing the provisions of take-home medication.

(F) Operated above combined licensed capacity for maintenance and detoxification programs at a single location. This paragraph shall not become operative until department regulations on narcotic treatment programs are revised to identify specific requirements in conjunction with this paragraph.

(2) (A) The order becomes effective when the department serves the program with a copy of the order. The order shall state the deficiencies forming the basis for the order and shall state the corrective action required for the department to vacate the order. The order, as it pertains to subparagraph (F) only, shall automatically be vacated when the department receives the program's written notification that licensed capacity has been achieved. If the order is issued pursuant to subparagraph (A), (B), (C), (D), or (E), the department shall vacate the order when the program submits a corrective action plan that reasonably addresses the deficiency or substantially conforms to the required action set out in the order.

(B) The department shall notify the program that the corrective action is accepted or rejected within 10 working days after receipt of the plan. If the department rejects the corrective action plan, it shall detail its reason in writing. The department order is vacated when the department either accepts a corrective action plan and ensures substantial conformity with the required action set out in the order or fails to reject a plan within 10 working days after receipt of the plan.

(3) In addition to any other remedies, a failure of the program to comply with the order of the department under this subdivision shall give rise to a civil penalty of five hundred dollars (\$500) a day for each day that the order is violated.

(4) All civil penalties collected by the department under paragraph (3) shall be deposited in the Narcotic Treatment Program Licensing Trust Fund, and shall be used to offset the department's costs associated with collecting the civil penalties, or associated with any civil, administrative, or criminal action against the program when appropriated for this purpose.

(b) (1) The director may, in addition to any other remedy, issue an order temporarily suspending a narcotic treatment program license prior to any administrative hearing for the reasons stated in subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a) when the department determines pursuant to the compliance inspection procedures set out in paragraph (2) of subdivision (a) of Section 11876, that the action is necessary to protect patients of the program from any substantial threat to their health or safety, or to protect the health or safety of the local community or the people of the State of California. Prior to issuing the order the director shall assure continuity of patient care by the program's guarantor or through the transfer of patients to other licensed programs. The director may issue any needed license or amend any other license in

his or her effort to assure that patient care is not impacted adversely by the suspension order.

(2) The director shall notify the licensee of the temporary suspension and the effective date thereof and at the same time shall serve the licensee with an accusation. Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for hearing, and the hearing shall be held as soon as possible, but not later than 20 days, exclusive of weekends, after receipt of the notice. The temporary suspension shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 20 days after the original hearing has been completed. Failure to cease operating after the department issues an order temporarily suspending the license shall constitute an additional ground for license revocation and shall constitute a violation of Section 11877.6. The department shall suspend the program's license if the hearing outcome is adverse to the license. The department shall notify the program of the license suspension within five days of the director's final decision.

(3) Failure of the licensee to cease operating after the director issues a temporary suspension order under paragraph (1) shall constitute an additional ground for license revocation.

(c) A program may, at any time after it is served with an order, petition the superior court to review the department's issuance of an order or rejection of a corrective action plan.

